

LETTER
FROM
THE SECRETARY OF WAR,
TRANSMITTING

Letters from officers of Quartermaster's Department, remonstrating against passage of Senate bill 192.

DECEMBER 4, 1879.—Referred to Committee on Military Affairs and ordered to be printed.

WAR DEPARTMENT, December 2, 1879.

The Secretary of War has the honor to transmit to the United States Senate letter from Maj. James M. Moore, quartermaster United States Army, and memorial of Col. Rufus Ingalls and other officers of the Quartermaster's Department, remonstrating against the passage of the bill (S. 192) to correct the date of commissions of certain officers in the Quartermaster's Department.

GEO. W. McCRARY,
Secretary of War.

The PRESIDENT OF THE UNITED STATES SENATE.

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., May 27, 1879.

SIR: I have the honor to inclose herewith a copy of the memorial of Rufus Ingalls and other officers of the Quartermaster's Department presented to the Congress of the United States, remonstrating against the passage of the bill (S. 192) to correct the date of commission of certain officers in the Quartermaster's Department.

I also inclose bill No. 192, and a similar bill, No. 577, introduced May 9, 1879.

This memorial was presented to protect our rights in the positions we have held in the Quartermaster's Department for thirteen years. Should either bill become a law, it will reduce memorialists to the same positions in their grades that they held when appointed to fill original vacancies at the time of the reorganization of the Army.

We believe that any attempt to readjust our rank at this late day would be fraught with great injustice; that it would be an advertisement that no action of the President and Senate is to be final, and would

establish a precedent under which no officer in the Army can feel his position secure.

Very respectfully, your obedient servant,

JAS. M. MOORE,

Major and Quartermaster United States Army.

To the Hon. SECRETARY OF WAR,

Washington, D. C.

(Through Quartermaster-General United States Army.)

[Senate Mis. Doc. No. 23, 46th Congress, 1st session.]

Memorial of Rufus Ingalls and other officers of the Quartermaster's Department, U. S. A., remonstrating against the passage of the bill (S. 192) to correct the date of commissions of certain officers in the Quartermaster's Department.

To the Congress of the United States:

Your petitioners respectfully show that they are officers of the United States Army holding commissions in the Quartermaster's Department, and were appointed by the President, by and with the advice and consent of the Senate of the United States, to fill certain original vacancies in said department created by the act of Congress, approved July 28, 1866, entitled "An act to increase and fix the military peace establishment of the United States." The provision of this act (sec. 13) creating new officers is in these words:

"And be it further enacted, That the Quartermaster's Department of the Army shall hereafter consist of one Quartermaster-General, with the rank, pay, and emoluments of a brigadier-general; six assistant quartermasters-general, with the rank, pay, and emoluments of colonels of cavalry; ten deputy quartermasters-general, with the rank, pay, and emoluments of lieutenant-colonels of cavalry; fifteen quartermasters, with the rank, pay, and emoluments of majors of cavalry; and forty-four assistant quartermasters, with the rank, pay, and emoluments of captains of cavalry; and the vacancies hereby created in the grade of assistant quartermasters shall be filled by selection from among the persons who have rendered meritorious services as assistant quartermasters of volunteers during two years of the war."

The corps, as established before the passage of this act, included three colonels, four lieutenant-colonels, and eleven majors. The act, therefore, created thirteen new offices in the Quartermaster's Department, in the grades of colonel, lieutenant-colonel, and major; and the President nominated, and, by and with the advice and consent of the Senate, appointed persons to fill the new offices so created.

The officers named in the bill (except Lieut. Col. Asher R. Eddy, who is deceased) claim that these appointments were illegal, because they were not made by the promotion of incumbents of offices existing in the Quartermaster's Department at the time of the passage of the act, and that such appointments were injurious to them, because they themselves were legally entitled to promotion to the new offices; and they ask for such legislation as will enable them to obtain the places which they would hold if they had been so promoted.

The following shows the present rank of the officers in their respective grades who would be affected by this bill, should it become a law, and their rank in their grades under this bill, viz:

List of colonels and lieutenant-colonels in the Quartermaster's Department as they now appear on the register, 1879.

List of colonels and lieutenant-colonels in the Quartermaster's Department as they would be under this bill.

COLONELS.

1. Rucker.
2. Ingalls.
3. Easton.
4. Van Vliet.

COLONELS.

1. Easton.
2. Van Vliet.
3. Rucker.
4. Ingalls.

LIEUTENANT-COLONELS.

1. Holabird.
2. Tompkins.
3. Ekin.
4. Saxton.
5. Bingham.
6. Perry.
7. Hodges.

LIEUTENANT-COLONELS.

1. Saxton.
2. Holabird.
3. Bingham.
4. Perry.
5. Hodges.
6. Tompkins.
7. Ekin.

NOTE.—Of these officers, Rucker, Holabird, Tompkins, and Ekin were appointed to fill *original vacancies* in their present grades. Ingalls was appointed to fill an *original vacancy* in the grade of lieutenant-colonel, and afterwards promoted by seniority to his present grade of colonel.

Had the appointments been made under the rule claimed by these officers, they could not have received the date of rank in their present grades that will be conferred by this bill, should it become a law, as the following table prepared from the data furnished by the Adjutant-General of the Army in his report dated January 2, 1878, on the petition of Colonels Easton *et al.*, addressed to the Senate Committee on Military Affairs, will show :

Name and present date of commission.	Date of rank in present grade these officers would have received under act of July 28, 1866, had the vacancies been filled by seniority.	Date of rank in present grade to be conferred by the pending bill.	Gain in date of rank in present grade by pending bill over what they would have received under their own construction of the act of July 28, 1866.		
			Years.	Months.	Days.
Easton, June 6, 1872	Feb. 22, 1869	July 28, 1866	2	6	25
Van Vliet, June 6, 1872	Feb. 22, 1869	July 28, 1866	2	6	25
Saxton, June 6, 1872	Feb. 22, 1869	July 29, 1866	2	6	24
Bingham, March 3, 1875	Mar. 3, 1875	July 29, 1866	8	7	5
Perry, March 3, 1875	Mar. 3, 1875	July 29, 1866	8	7	5
Hodges, May 29, 1876	May 29, 1876	July 29, 1866	9	10

NOTE 1.—After the date of these officers is thus fixed by the bill on the same day as the colonels and lieutenant-colonels filling original vacancies, then by virtue of their old rank of a previous date (prior to the reorganization of the Army) as provided by paragraph 5, Revised United States Army Regulations, 1863, the officers named in the bill will be placed above petitioners of same grade in the order named in the preceding statement.

NOTE 2.—In the statement published at page 5, Senate Report No. 293, Forty-fifth Congress, second session, Moore and Montgomery were left out of the calculation. Counting them in with the others in the estimated dates of promotion, the figures would be changed as indicated in this table.

From this it will be seen that the demands of these officers are far greater than they would be entitled to under their own construction of the law.

It will also be seen that under this proposed readjustment of rank Saxton would be entitled to the first vacancy of colonel, to which Holabird is now entitled; Bingham to the third vacancy of colonel, to which Ekin is now entitled; Perry to the fourth vacancy of colonel, whereas he is now only entitled to the sixth; and Hodges will be entitled to the fifth vacancy of colonel, whereas he is now only entitled to the seventh. How, then, can it be said that no one is "displaced" by this readjustment?

The proviso in the bill, "that no officer in said department shall, by this act, be reduced from his present rank, nor shall any additional pay or allowance be made to any officer by virtue of this act," is a delusion and a snare.

How can Saxton be promoted from the fourth to the first lieutenant-colonel on the list, and thus become eligible to the first vacancy of colonel in the corps, without displacing Holabird, who is now the ranking lieutenant-colonel and entitled to be promoted to the first vacancy of colonel? How can Bingham be advanced to the third ranking lieutenant-colonel on the list, without displacing Ekin, who now holds that rank in his grade, and is entitled to be promoted to the third vacancy of colonel? How can Perry be advanced in his rank from the sixth to the fourth lieutenant-colonel, and thus become entitled to the fourth vacancy of colonel, without the displacement of Tompkins and Ekin from their right to the second and third vacancies of colonel? And how can Hodges be advanced two files in his grade without the displacement of Tompkins and Ekin, and the consequent reduction of those officers from their present rank in their grade—second and third—to sixth and seventh?

These officers cannot be advanced in their rank in their grades without the displacement of those officers who now hold the rank in the grade to which they aspire. It cannot be accomplished without it is taken from the one and conferred upon the other.

If this principle obtains, the same question will be raised as to the majors in the corps with like effect. Indeed, the same question would arise in every corps and arm of the service.

Your petitioners respectfully submit that the action of the President and the Senate in the matter of these appointments was well considered, was legal, and that it ought not, after the lapse of thirteen years, to be opened and revised.

Quartermaster-General Meigs, in a letter under date of January 8, 1878, says:

"It is not for me to criticise the legislation of Congress, but I venture to say that

the scheme of reorganization of this department at the close of the war, by which some of those who had rendered the most valuable service were placed in high positions, and some of those volunteers who had rendered like service were advanced, had my full concurrence and approbation."

The Adjutant-General of the Army, in his report dated January 2, 1878, upon the petition of Colonel Easton *et al.*, says:

"The appointments were, with perhaps very few exceptions, made in accordance with the recommendation of the Quartermaster-General."

The act, in form as well as in substance, established the Quartermaster's Department as an increased, and, to the extent of the increase, a new corps. It is entitled "An act to increase and fix the military peace establishment of the United States." It superseded all former acts and regulations, and, but for section 31, all commissions in the Quartermaster's Department would have been vacated. Section 31 of this act is as follows, viz:

"That nothing in this act shall be so construed as to vacate the commission of any officer now properly in service." * * *

Had this section been omitted, and all commissions vacated, the old department would certainly have been disestablished and the new department established by the act. In this event there could have been no such thing as promotion in the department according to seniority, for there would have been no officers in it to promote.

It created many original vacancies in the line and staff, which were filled by selection from those officers who had won distinction during the war. It provided that the Quartermaster's Department of the Army should thereafter consist of the officers indicated in the act.

If the words "in established regiments and corps" had been omitted, the regulation might be broad enough to cover appointments to the thirteen new offices, which were not vacancies in established corps, but were original vacancies, and had to be first filled before the corps, as to its new offices, became an established corps; for the comprehensive words "all vacancies" would then stand without restriction or qualification, and the regulation, so modified, being broad enough to cover these appointments, might have furnished a binding rule for the President and Senate in the exercise of the appointing power, provided there was nothing in the Constitution to prevent.

But the words "in established regiments and corps" were not omitted from the regulations of 1863. On the contrary, they were introduced into that regulation at its original adoption in 1857 as a substitute and equivalent for other words which had been used in all former corresponding regulations, but were omitted in that of 1857. Their manifest object and effect were to give these new regulations the same sense as the corresponding old regulations, under a new and improved form. They restrict the application of the regulations to accidental vacancies in established corps, and exclude its application to original vacancies in newly created offices, and thus leave the rule exactly where it always stood.

The corresponding regulations of 1813, 1814, 1815, and 1821, were in these words:

"The original vacancies will be supplied by selection; accidental vacancies by seniority, except in extraordinary cases."

The regulations of 1825 were in these words:

"The Executive will fill original vacancies, when created, by selection; accidental vacancies, below the rank of brigadier-general, by promotion according to seniority, except in extraordinary cases."

The following are the regulations of 1841 and 1847:

"Original vacancies will be supplied by selection. Accidental vacancies to the rank of colonel, by promotion according to seniority, except in extraordinary cases."

By a substitution of equivalent new words in the regulations of 1857 and 1863 the same rule is preserved in an improved form.

Paragraph 19 of the "Revised United States Army Regulations, 1863," article 4, title "Appointment and Promotion of Commissioned Officers," reads as follows:

"All vacancies in established regiments and corps, to the rank of colonel, shall be filled by promotion according to seniority, except in cases of disability or other incompetency."

Your petitioners respectfully invite attention to the following extract from a report made by the Senate Committee on Military Affairs, Forty-fifth Congress, to whom a similar bill to that now under consideration was referred:

"Thus it will be seen that from 1813 up to 1857 the rule had been that original vacancies should be filled by selection, and only accidental vacancies by promotion according to seniority. There is no doubt that the vacancies created by the act of 1866 were original vacancies, and could be filled by selection unless the law previously in force was changed in the new edition of the Regulations published in 1857. There is also no question that, in the absence of legislation limiting his constitutional power of appointment, the President can fill all vacancies in the Army by selection, and the only limitation, if any, upon his power to fill the vacancies in the Quartermaster's Department created by the law of 1866 by selection is contained in the Army Regulations of 1863, above quoted.

"It is a well-settled principle of law that, in the construction of statutes, a revision thereof shall be held to work no change in the law unless the language of the revision clearly shows such change to have been intended. If the construction is doubtful, it will be presumed that the meaning of the law is the same as it was before. (*Douglass v. Howland*, 24 Wendell, 45-47.)

"Now, do the Army Regulations of 1857 clearly show an intention to change the rule previously in force? That depends upon the question whether the rule in the Regulations of 1857 necessarily has a meaning inconsistent with that of the previous rule. When is a regiment or corps established, within the meaning of that clause? It is clear that it is not thus established merely by the law which requires and fixes it. If that were so, the right to fill vacancies by selection would thereby be wholly taken away from the President.

"The true meaning of the rule, we believe, is that the regiment or corps is established only when all the officers belonging to it by law have once been filled. Let us suppose, by way of illustration, that a new regiment is added to the Army by law. When is that regiment established within the meaning of the Army Regulations of 1863? Is it established by the appointment of a part of its officers only? It seems to us that it cannot be; otherwise the appointment of its second lieutenants would take away from the President the right to appoint its first lieutenants. If the appointment of a part of the officers establishes the regiment within the meaning of this rule, then the officers thus appointed would be entitled to promotion to the vacancies above them which had not been filled. If the appointment of a part only of its officers is an establishment of a regiment, then the President could only preserve his right to fill the higher regimental offices by selection, by filling them in their order, beginning with the highest. Yet the regiment is established at any time as to the officers actually appointed and confirmed, and they are entitled to promotion if a vacancy happens in a higher office which has once been filled, but until all the officers have been appointed the regiment is only partially established. It is not established until all the offices in it have been filled. The same rule applies to a corps of the Army. Until the offices in the corps have been filled, the corps is not established, though it may be partially so.

"Before the act of July 28, 1866, went into operation, the Quartermasters' Corps was established, with a certain number of officers. When the act went into force, that corps consisted of a larger number of officers. It was not an established corps, because the offices had not been filled, but a corps only partially established. It was precisely like a regiment in which only the second lieutenants have been appointed. It became established under the law of 1866, only when the vacancies created by that law had been filled, and until that time the President had the right to supply vacancies by selection.

"Your committee also regard the President's action, hereinbefore referred to, as equitable and just. By it he recognized and rewarded the distinguished services of some of the volunteer officers of the war."

It is nowhere claimed that paragraph 19, of the Army Regulations of 1863, had the force of law prior to the passage of the act of 28th of July, 1866. The same act that created these new offices in the Quartermaster's Department gave to this regulation what it never had before, the force of law. Prior to that date it was simply a convenient rule of the War Department, and, like any other rule of an executive department, could be set aside or modified at the pleasure of the head of the department.

Section 37 of the act to increase and fix the military peace establishment, approved July 28, 1866, directed the Secretary of War to have prepared and report at the next ensuing session a code of regulations for the government of the Army, &c., but further declares: "The existing regulations to remain in force until Congress shall have acted on said report."

The Attorney-General, under date of January 22, 1872, Vol. XIV Opinions of Attorneys-General, page 3, says:

"No action has been taken by Congress in reference to any such report, and therefore the regulations referred to, by virtue of said section 37, have the force of law."

Conceding, for the purposes of this case, that there is room for doubt as to the proper interpretation of the nineteenth paragraph of the Army Regulations of 1863 by the President and the Senate, the Secretary of War, the Adjutant-General, and the Quartermaster-General, in the matter of these appointments, where are we to look to have these doubts resolved, to learn the reason and spirit of the rule, or the cause which led the department to adopt it? Not to Congress, for Congress had no hand in the preparation of it. Congress simply gave to it the force of law until other regulations could be prepared and acted on by that body.

The executive department of the Army, where these rules are prepared and the reason and spirit of them are known and the cause which gave rise to them is understood, would seem to be the true source of light; and the most effectual way of discovering the real meaning of the rules is the interpretation that department places upon them.

As to the construction to be given to this particular rule, the Adjutant-General of the Army, in his report dated January 2, 1878, on the petition of Colonel Easton *et al.*, says:

"The subject of the manner in which original vacancies should be filled has been very often discussed, and the decisions have invariably been (and it has become the established principle of the department) that, unless otherwise provided by law, the President has the authority to fill these vacancies by selection. * * *

"There is no such thing as regular promotion to an original vacancy."

In determining the construction of the nineteenth paragraph of the Army Regulations of 1863, the history of the rule and the language of previous rules for which it is a substitute and the ends contemplated are to be considered. (Henry v. Tilson, 17 Vermont, 479; 3 Maule & Selwyn, 510.)

It is respectfully submitted that the construction placed upon the rule by the executive department in which it originated, and the established principle of that department thereunder, are conclusive as to the meaning of the rule, and as to the legality of the appointments complained of by the officers named in the bill.

The Senate Committee on Military Affairs, Forty-fifth Congress, in reporting on this matter, says:

"It is alleged * * * that the Attorney-General of the United States, in an opinion given to the Secretary of War, January 22, 1872, put a construction upon the act of 1866 favorable to the claims of the officers named in the bill.

"Your committee have thoroughly examined that opinion. It was evidently prepared without much consideration. It simply discusses the question whether the term "all vacancies," in the Army Regulations of 1863, is broad enough to include the vacancies created by the act of 1866. It does not in any way allude to the question whether the Quartermasters' Corps was *established* before those vacancies had been filled, which is really the only question in the case. Your committee do not regard an opinion which makes no allusion whatever to the only point in controversy as having any weight.

"It is alleged * * * that in the cases of Col. N. H. Davis, inspector-general, Lieut. Col. Absalom Baird, assistant inspector-general, and Maj. William Myers, quartermaster, Congress, by acts approved June 8, 1872, and June 20, 1874, established the principle for which they now contend.

"Your committee find that the cases of Davis and Baird were not analogous to this and furnish no precedent for the legislation now asked for. The case of Myers was much aided by a general but unfounded belief that the Attorney-General had carefully examined the question, and given an opinion in his favor covering the questions in controversy.

* * * * *

"The officers whom it is intended by this bill to overslaugh were appointed in 1866, upon a construction of the Army Regulations which has always prevailed and now prevails in the War Department. That construction was then adopted by the President and the Senate after full debate. This bill proposes, after the lapse of nearly twelve years, to reverse that action, and, upon a construction which at best is doubtful, to degrade those officers whose appointment was due only to their merit and distinguished services. We believe such a precedent to be in the highest degree dangerous to the interests of the Army. It is an advertisement that no action of the President and Senate is to be final, and that after any lapse of time it may be overturned. It is true that no act of one Congress is binding upon another, but it is nevertheless true that in matters of this kind decisions solemnly made and constructions long established should not be allowed to be drawn in question. The action of this Congress may be reversed by that of the next, and that by the action of another, and so on *ad infinitum*. The passage of this bill would tend, in our judgment, to bring about a state of things under which no officer in the Army can feel himself secure from attack, and the energies of gallant men, which should be given to the service of their country, will be wasted in paltry intrigues to supplant each other.

"For these reasons your committee report adversely to the said bill and memorial, and recommend that said bill do not pass."

It is respectfully submitted that the proposed legislation involves a grave question of constitutional law. President Monroe, in his message of April 12, 1822, said:

"In filling original vacancies that is, offices newly created, it is my opinion, as a general principle, that Congress has no right under the Constitution to impose any restriction by law on the power granted to the President, so as to prevent his making a free selection for these offices from the whole body of his fellow-citizens."

This view was concurred in by the Hon. John C. Calhoun, then Secretary of War.

The claim of the officers named in the bill rests upon no equitable ground. Their rights as to promotion in their corps, as it existed when this act was passed, were not impaired by it. It is not pretended, nor is it true that any of them have lost any promotion which they would have had if this act had not passed. All of them have been promoted since the reorganization of the Army, while but one of those officers appointed to fill original vacancies has been promoted since that time. But what they complain of is not that this law has subtracted from their rights as they stood before its passage, but that it has not conferred upon them enough new rights. They think

they had an equitable ground for demanding more new rights as the result of this enactment. They think they ought in equity to have not only the enlarged range of promotion to accidental vacancies afforded by the increased number of the corps, but also priority over all other persons in appointments to the new offices, to which their right to promotion in their established corps, as it stood before the passage of the act, could, by no possibility, give them admittance, because such offices had no existence.

This would certainly be a most remarkable equity, even if the circumstances of the passage of the act of 1866 should be left entirely out of view, and only the provisions of that act taken into consideration. But it becomes still more remarkable when it is considered that the law was passed at the close of a war, in which the Regular Army amounted to only thirty regiments and the volunteer army to more than a million of men, and in which the services of the volunteer quartermasters were as conspicuous as those of any other staff officers in the Army. The effect of the proposed legislation would not be to secure to them any equitable rights, but by a forced construction to pervert the law into a means of conferring upon them mere arbitrary advantages, regardless alike of its letter and spirit and of the manifest equities of the case.

The Quartermaster-General and the Adjutant-General of the Army bear testimony that the appointments in the Quartermaster's Department to the newly-created offices by the act of 28th July, 1866, were well considered, and were made chiefly on the recommendation of General M. C. Meigs. The high character, the long and eminent public services, of the Quartermaster-General proclaim the rule by which he was guided in the matter of his recommendations.

Your petitioners submit that there is no public reason for this legislation, that no public good can be accomplished by it, but that great injury may result in establishing a precedent that might lead to the entire readjustment of rank throughout the Army, and that the selections that were made in 1866, while the war record of every officer was familiar to the President, the Secretary of War, the heads of bureaus, and the Senate of the United States, were substantially just, and that any attempt to "readjust" that action at this late day would be fraught with great danger to the interests of the Army and work gross injustice to many officers.

RUFUS INGALLS,
Colonel and Assistant Q. M. Gen'l, Br't Major-General.
S. B. HOLABIRD,
Lieut. Col. and Deputy Q. M. Gen'l, Br't Brig. General.
C. H. TOMPKINS,
Lieut. Col. and Deputy Q. M. Gen'l, Br't Brig. General.
JAMES A. EKIN,
Lieut. Col. and Deputy Q. M. Gen'l, Br't Brig. General.
R. N. BATCHELDER,
Major and Quartermaster, Br't Colonel.
M. I. LUDINGTON,
Major and Quartermaster, Br't Lieutenant-Colonel.
JAMES M. MOORE,
Major and Quartermaster, Br't Lieutenant-Colonel.

[S. 192, 46th Congress, 1st session.]

A BILL to correct the date of commission of certain officers of the Quartermaster's Department.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and is hereby, authorized to nominate and promote Colonels Langdon C. Easton and Stewart Van Vliet, assistant quartermasters-general, to be colonels and assistant quartermasters-general, to date from the 28th day of July, 1866; and Lieutenant-Colonels Asher R. Eddy, Rufus Saxton, Judson D. Bingham, Alexander J. Perry, and Henry C. Hodges, deputy quartermasters-general, to be lieutenant-colonels and deputy quartermasters-general, to date from the 29th day of July, 1866: *Provided,* That no officer in said department shall by this act be reduced from his present rank, nor shall any additional pay or allowance be made to any officers by virtue of this act.

[S. 577, 46th Congress, 1st session.]

A BILL to correct the date of commission of certain officers of the Quartermaster's Department.

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and promote Colonels Langdon C. Easton and Stewart Van Vliet, assistant quartermasters-general, to be colonels and assistant quartermasters-general, to date from the 28th day of July, 1866; and Lieutenant-Colonels Asher R. Eddy, Rufus Saxton, Judson D. Bingham, Alexander J. Perry, and Henry C. Hodges, deputy quartermasters-general, to be lieutenant-colonels and deputy quartermasters-general, to date from the 29th day of July, 1866: *Provided*, That no officer in said department shall by this act be reduced from his present rank, nor shall any additional pay or allowance be made to any officers by virtue of this act.